

## CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Diana Arreaga	Team: Squad #2	CCRB Case #: 201509299	<input type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Thursday, 10/29/2015 7:15 PM	Location of Incident: 160th Street and 107th Avenue	Precinct: 103	18 Mo. SOL 4/29/2017	EO SOL 4/29/2017	
Date/Time CV Reported Mon, 11/02/2015 8:21 AM	CV Reported At: CCRB	How CV Reported: Phone	Date/Time Received at CCRB Mon, 11/02/2015 8:21 AM		

Complainant/Victim	Type	Home Address

Witness(es)	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Deangelo Jones	02393	935080	103 PCT
2. SGT Edwin Ferreira	04052	932638	103 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Deangelo Jones	Abuse: PO Deangelo Jones questioned § 87(2)(b)	
B.SGT Edwin Ferreira	Abuse: Sgt. Edwin Ferreira questioned § 87(2)(b)	
C.SGT Edwin Ferreira	Abuse: Sgt. Edwin Ferreira stopped § 87(2)(b)	
D.POM Deangelo Jones	Abuse: PO Deangelo Jones stopped § 87(2)(b)	
E.POM Deangelo Jones	Abuse: PO Deangelo Jones frisked § 87(2)(b)	
F.POM Deangelo Jones	Abuse: PO Deangelo Jones searched § 87(2)(b)	
§ 87(4-b), § 87(2)(g)		

### Case Summary

On October 29, 2015, at approximately 7:15 p.m., § 87(2)(b) and § 87(2)(b) were walking to a store on 160<sup>th</sup> Street and 107<sup>th</sup> Avenue in Queens. PO Deangelo Jones and Sgt. Edwin Ferreira of the 103<sup>rd</sup> Precinct were parked in a police vehicle when § 87(2)(b) walked past them. PO Jones and Sgt. Ferreira exited the vehicle and approached § 87(2)(b). PO Jones and Sgt. Ferreira questioned § 87(2)(b) about someone who was killed in the neighborhood (**Allegations A and B**). Sgt. Ferreira and PO Jones stopped § 87(2)(b) (**Allegations C and D**). PO Jones instructed § 87(2)(b) to lean against a wall and patted him down (**Allegation E**). PO Jones searched § 87(2)(b) and found a knife and marijuana in his possession (**Allegation F**).

§ 87(4-b), § 87(2)(g)

§ 87(2)(b) was taken to the 103<sup>rd</sup> Precinct stationhouse where he was released on a Desk Appearance Ticket for § 87(2)(b) (Board Review 01). [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

### Mediation, Civil and Criminal Histories

- Mediation was offered to but rejected by § 87(2)(b)
- As of December 2, 2015, § 87(2)(b) has not filed a Notice of Claim regarding this incident (Board Review 02).

[§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

### Civilian and Officer CCRB Histories

- § 87(2)(b) has filed one previous CCRB complaint with a total of one allegation of physical force. § 87(2)(b)
- PO Jones has been a member of the NYPD for 11 years and has had four previous CCRB allegations involving three cases with no substantiated allegations (see officer history).
- Sgt. Ferreira has been a member of the NYPD for 12 years and has had twenty-three allegations involving eight cases with no substantiated allegations (see officer history).

### Potential Issues

- Video footage regarding the incident was requested from VIPER through IAB on November 9, 2015. The undersigned contacted VIPER on December 15, 2015, to follow up with the request and was informed that the initial request was never received from IAB; IAB followed up on the request. On December 21, 2015, IAB responded that they were unable to retrieve video footage from the VIPER terminal since the request was over 30 days.

### Findings and Recommendations

#### Explanation of Subject Officer Identification

- § 87(2)(b) alleged that PO Jones questioned, frisked, and searched him. PO Deangelo Jones admitted to questioning, stopping, frisking, and searching § 87(2)(b) § 87(2)(g). Sgt. Edwin Ferreira admitted to

questioning § 87(2)(b) § 87(2)(g). Sgt. Ferreira was the supervising officer during the incident; § 87(2)(g)

**Allegation A – Abuse of Authority: PO Deangelo Jones questioned § 87(2)(b)**

**Allegation B – Abuse of Authority: Sgt. Edwin Ferreira questioned § 87(2)(b)**

It is undisputed that PO Deangelo Jones and Sgt. Edwin Ferreira questioned § 87(2)(b) § 87(2)(g)

§ 87(2)(b) stated that he was walking with his friend § 87(2)(b) to a deli located near the corner of 107<sup>th</sup> Avenue and 160<sup>th</sup> Street. PO Jones, who was inside of a police vehicle, questioned him about someone who was killed in the neighborhood. § 87(2)(b) did not explain as to what exactly the officers had asked him. § 87(2)(b) responded that he had no information and continued to walk.

PO Jones stated that as he was driving southbound on 160<sup>th</sup> Street, Sgt. Ferreira told him that he had observed something unusual and instructed him to drive closer to the corner of 160<sup>th</sup> Street and 107<sup>th</sup> Avenue. PO Jones observed two individuals walk south bound on 160<sup>th</sup> Avenue then made a left turn onto 107<sup>th</sup> Avenue. PO Jones sped up the vehicle and made a left turn onto 107<sup>th</sup> Avenue. When the two individuals saw the officers behind them they quickly separated and walked in different directions. PO Jones drove up to § 87(2)(b) since he was closer to the police vehicle although he was still walking and asked him how he was doing and if everything was alright. § 87(2)(b) crossed the street on 107<sup>th</sup> Avenue and approached the police vehicle and replied that everything was fine.

Sgt. Ferreira stated that as PO Jones drove the police vehicle northeast on 160<sup>th</sup> Street near 107<sup>th</sup> Avenue, he observed § 87(2)(b) engage in a conversation with a known drug dealer in the area about twenty feet away. Sgt. Ferreira saw § 87(2)(b) exchange something with the other individual but could not see exactly what was exchanged. PO Jones drove past the two individuals and Sgt. Ferreira ordered him to make a U-turn and return to the two individuals. § 87(2)(b) and the individual parted ways in separate directions and officers approached § 87(2)(b) since he was still on scene while the other individual had left. Sgt. Ferreira was still in the police vehicle when he told § 87(2)(b) if he could ask him something. Sgt. Ferreira and PO Jones exited their vehicle and approached § 87(2)(b). Sgt. Ferreira asked § 87(2)(b) how he knew the individual whom he was seen speaking with earlier.

People v. Hollman 79 N.Y.2d 191 (1992) states that an officer cannot ask accusatory questions without founded suspicion of criminality (Board Review 05).

§ 87(2)(g)

§ 87(2)(g)

**Allegation C – Abuse of Authority: Sgt. Edwin Ferreira stopped § 87(2)(b)**

**Allegation D – Abuse of Authority: PO Deangelo Jones stopped § 87(2)(b)**

**Allegation E – Abuse of Authority: PO Deangelo Jones frisked § 87(2)(b)**

It is undisputed that Sgt. Edwin Ferreira and PO Deangelo Jones stopped § 87(2)(b) and PO Jones frisked § 87(2)(b)'s jacket pocket. § 87(2)(g)

§ 87(2)(b) stated that PO Jones told him he had a warrant against him and instructed him to lean against the wall. PO Jones then grabbed § 87(2)(b) by the right side of his clothing and Sgt. Ferreira grabbed his left side and they pushed him against a fence and patted him down.

PO Jones stated that as § 87(2)(b) approached the vehicle he noticed that § 87(2)(b)'s left jacket pocket had a bulge and was hanging lower than the right pocket. When asked by the undersigned to describe the bulge, PO Jones could not provide a further description for the bulge. PO Jones did not know what item was in § 87(2)(b)'s pocket. He explained that earlier in the month there was a shooting on 164<sup>th</sup> Street and 107<sup>th</sup> Avenue and so officers were doing enforcement in the area. Officers were given a vague description of the shooter which PO Jones could not recall. PO Jones exited the police vehicle and approached § 87(2)(b) in order to analyze the heavy pocket. PO Jones asked § 87(2)(b) “is everything alright, what is in the left pocket of yours, do you have anything?” § 87(2)(b) replied that all he had was keys. PO Jones squeezed § 87(2)(b)'s jacket pocket and confirmed that § 87(2)(b) had a heavy set of keys. PO Jones told § 87(2)(b) he would explain why he had stopped him and asked for his photo identification. As § 87(2)(b) moved his jacket, PO Jones was able to see the outline of a knife in § 87(2)(b)'s pants pocket. PO Jones asked him what was in his pocket and § 87(2)(b) stated that he had a knife. PO Jones touched the pocket to confirm it was a knife then retrieved the knife.

Sgt. Ferreira stated that as he was questioning § 87(2)(b) PO Jones observed the outline of a knife on § 87(2)(b) but he could not remember where the outline was located. PO Jones recovered the knife and asked if § 87(2)(b) had anything else and § 87(2)(b) claimed that he had an active warrant and marijuana in his possession. Officers then patted down § 87(2)(b) after the knife was retrieved and PO Jones recovered marijuana from his pocket.

§ 87(2)(g)

People v. De Debour, 40 N.Y.2d 210, 233 (1976) states that a police officer can forcibly stop and detain a person when the officer has a reasonable suspicion that the person has

committed, is committing, or is about to commit a felony or misdemeanor. A police officer has the authority to frisk an individual if the officer reasonably suspects that the person is armed and dangerous (Board Review 06). U.S. v Jackson, No. 15-CR-106 (JPO) (S.D.N.Y., July 29, 2015) states that cases where a "bulge" in a suspect's clothing justifies a frisk require that the bulge's size, shape, and placement justify the conclusion "that is, the reasonable suspicion" that the bulge is a weapon; unidentifiable or amorphous bulges have repeatedly been held to be an insufficient basis for a frisk (Board Review 07). People v. Marine, 536 N.Y.S.2d 425 (1989-1<sup>st</sup> Dept.) states that a frisk may not be predicated merely upon the observation of an indefinable bulge and the reputation of a location (Board Review 08). People v. Hampton, 200 A.d.2d 466 (1994) states that innocuous behavior, albeit in a high crime area, does not generate a founded or reasonable suspicion that criminality is afoot (Board Review 09). People v. Ransom, 46 Misd. 3d 1224(A) (Bronx County, March 6, 2015) states that vague descriptions or generic descriptions of a subject which could apply to numerous individuals cannot form the basis of reasonable suspicion (Board Review 10). People v. Dubinsky, 734 N.Y.S.2d 245 (2001-2<sup>nd</sup> Dept.) states that vague and general descriptions are not sufficient to constitute reasonable suspicion (Board Review 11).

§ 87(2)(g)

§ 87(2)(g)

**Allegation F – Abuse of Authority: PO Deangelo Jones searched § 87(2)(b)**

It is undisputed that PO Jones searched § 87(2)(b) § 87(2)(g)

Initially, § 87(2)(b) stated during his verified statement that PO Jones placed him in handcuffs. PO Jones and Sgt. Ferreira searched his pockets and found his photo identification, a folding knife, keys and a wallet; officers also searched his shoes and socks. During a follow-up phone statement, he stated that an officer put his hands into his pocket then asked him what he had on his person. § 87(2)(b) responded that he had a knife in his back pocket that he used for work and took it out to show the officers.

PO Jones stated that he told § 87(2)(b) he would explain why he had stopped him and requested his photo identification. As § 87(2)(b) moved his jacket from his right side to retrieve his wallet from his pants pocket, PO Jones was able to see the outline of a knife approximately 3 – 4 inches in length inside of § 87(2)(b)'s pants pocket. PO Jones told § 87(2)(b) to stop entering his pockets and asked if he had anything else on him that he shouldn't have and § 87(2)(b) replied that he had a knife and a joint. PO Jones touched § 87(2)(b)'s pocket after § 87(2)(b) admitted to having a knife, felt the knife, and removed it from his pocket. PO Jones flipped the knife and saw that it was a gravity knife. PO Jones then recovered a marijuana joint from § 87(2)(b)'s left side pocket. Sgt. Ferreira corroborated that PO Jones observed the outline of a knife on § 87(2)(b) and after PO Jones retrieved the knife he asked § 87(2)(b) if he had anything else on his person. § 87(2)(b) stated that he had an active arrest warrant and marijuana. PO Jones then retrieved marijuana from § 87(2)(b)'s pocket.

Patrol Guide Procedure 212-11 states that a uniformed member of service can search, if frisk reveals object which may be a weapon (Board Review 12).

§ 87(2)(g)

§ 87(2)(g) [Redacted]  
[Redacted]  
[Redacted]  
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§ 87(2)(g), § 87(4-b) [Redacted]  
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Squad: 2

Investigator: \_\_\_\_\_  
Signature                      Print                      Date

Pod Leader: \_\_\_\_\_  
Title/Signature                      Print                      Date

Attorney: \_\_\_\_\_  
Title/Signature                      Print                      Date